

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-3852

United States of America,

Appellee,

v.

Eduardo Olvera-Yanez, also known as
Jose G. DeLeon, also known as
Eduardo Olvera, also known as
Eduardo O. Olvera, also known as
Eduardo G. Yanez, also known as
Eudardo O. Yanez, also known as Jose
Guadalupe Ledesma-Deleon, also
known as Jose Guadalupe Ledesma,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: February 6, 2001
Filed: March 6, 2001

Before HANSEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Eduardo Olvera-Yanez pleaded guilty to illegally re-entering the United States after deportation, in violation of 8 U.S.C. § 1326(a). His sentence was enhanced under section 1326(b)(2) and U.S.S.G. § 2L1.2(b)(1)(A) because he had previously been

deported after being convicted of an aggravated felony. The district court¹ sentenced him to 77 months imprisonment and 2 years supervised release.

Olvera-Yanez argues on appeal, as he did below, that the fact of his prior aggravated-felony conviction had to be charged in the indictment and proven beyond a reasonable doubt because Almendarez-Torres v. United States, 523 U.S. 224 (1998), is no longer good law in light of Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). We reject this argument because the Apprendi Court declined to overrule Almendarez-Torres, *id.* at 2362, and we have previously declined to read Apprendi as disturbing the holding of Almendarez-Torres, *see United States v. Rush*, Nos. 00-2557/2765, 2001 WL 43523, at *2 (8th Cir. Jan. 19, 2001) (per curiam) (Apprendi does not apply to fact of prior conviction); United States v. Aguayo-Delgado, 220 F.3d 926, 932 n.4 (8th Cir.) (“In Apprendi, the Court left Almendarez-Torres untouched, although [it] expressed a willingness to reconsider it.”), *cert. denied*, 121 S. Ct. 600 (2000).

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The Honorable Thomas M. Shanahan, United States District Judge for the District of Nebraska.